IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 171 OF 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
MEHTA PARIKH & CO. P. LTD. - Opponent(s)

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Appearance :
MRS. MONA BHATT for MR. MANISH R. BHATT for Applicant(s).
None for Opponent(s) though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/07/2006

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

The Tribunal, at the instance of the

Revenue, has referred the following question for our opinion:

> "Whether the Appellate Tribunal is right in law and on facts in holding that leave encashment and bonus should not be considered for computing disallowance under Sec.40(c) of the Income-tax Act?"

2. Smt.Bhatt, learned Counsel for the Revenue, submits that between the same parties, for the Assessment Year 1980-81, an identical question was referred to this Court and a Division Bench of this Court, in I.T.R. No. 190 of 1988 (***Commissioner of Income-Tax vs. Mehta Parikh & Co. Pvt. Ltd.***) disposed of on 4th July, 2002, placing reliance upon a judgement of this Court in ***Ambica Mills Ltd. vs. Commissioner of Income-Tax***, ***(1998) 231 ITR 583***, has observed that the Tribunal committed an error in coming to the conclusion that the payment on account of bonus and leave encashment to the Directors were required to be excluded for computing the disallowance under Section-40(c) of the Act.

3. It is to be seen that for deciding the appeal in favour of the assessee the Tribunal had relied upon

its earlier order. As the very foundation, upon which the Tribunal had rest its order, has become nonest, the order passed by the Tribunal cannot be allowed to stand. The Reference is answered in favour of the Revenue and against the Assessee. We hold that the Tribunal committed an error in coming to the conclusion that the payment on account of bonus and leave encashment to the Directors were required to be excluded for computing the disallowance under Section-40(c) of the Act. The Reference is accordingly disposed of. No costs.

[***R.S.Garg, J.***]

[***M. R. Shah, J.***]

*kamlesh**